Contracting Basics: WHY YOU NEED TO PAY ATTENTION TO THOSE CLAUSES YOU NEVER READ!

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Legal Disclaimer

This presentation is solely intended to help you understand the area of law, and it should not be interpreted as a substitute for professional legal advice about the topics we discuss. You should accept legal advice only from a licensed legal professional with whom you have an attorney-client relationship.

Polling the Room:

1) How many of you are responsible for reviewing and approving contracts?

2) What types of contracts are you primarily dealing with?

3) How many of your organizations have a policy or process for the review and approval of contracts?

What we'll be covering:

1) What qualifies as a contract?
2) What kinds of contracts require what level of review.
3) A checklist and the meanings of important (and often overlooked) terms.

What qualifies as a contract?

- Any agreement between two parties where something of value is exchanged.

When should a contract be in writing?

- When there is asset, financial, reputational, or safety risks to your organization!

Isn’t that all contracts?

- Pretty darn close!

Contract Categories based on level of risk to organization.

- Legal Review Essential
- Legal Review Highly Recommended
- Routine contracts supported by legal counsel.
- Non-negotiable contracts . . . Aka "contracts of adhesion".

Legal Review Essential

- Contracts involving the sale or lease of real property or businesses;
- Contracts for major construction;
- Financing/loan contracts;
- Contracts that include access to or use of your intellectual property: trademarks, logos, brand, etc.;
- Contracts that include access to or use of sensitive, proprietary, or confidential organizational information.
- Contracts that include access to PII.
- Any contract in which
  - you don't understand what's written.
  - It's a new major relationship
  - Significant organizational funds/assets are being committed.
  - They are requesting your company purchase insurance beyond what you typically obtain or that would have a large financial burden on you.

Legal Review Strongly Recommended

- Contracts that involve risk of death, injury, or harm to anyone.
- Liability Waivers
- Contracts with subcontractors providing services that involve interacting with your clients/students/families
- Contracts with schools or other organizations whose students and chaperones will be participating in your program
- Contracts with international organizations or from states where you do not typically operate, and the proposed contract requires application of that location’s laws
- Contracts where the duration of the contract is undefined or longer than a year.
- Contracts where your financial obligation/exposure is greater than $???
- Any contract you download from the internet!

Contracts supported by legal counsel

- Liability Waivers
- Student Program Terms and Conditions
- Routine contracts for services previously reviewed and approved by legal counsel
- Routine contracts applied to a change in conditions and circumstances.
- Contracts with schools or other organizations whose students and chaperones will be participating in your program
- Contracts where your financial obligation/exposure is greater than $???
- Contracts where the duration of the contract is undefined or longer than a year.

“Non-negotiable” Contracts (aka Contracts of Adhesion)

- Examples: Fleet rental contracts, website management contracts, data management contracts, etc.
- Eyes wide-open!: Important Things to Review and understand:
  - Limitation of recoverable damages if there is a breach.
  - Penalties or liquidated damages if you terminate the agreement early
  - Arbitration (where and how conducted)
  - Choice of law.

Why is it important to read and understand your contracts?

- Thoughts?
- There is more to an agreement than the big-ticket items.
- Contracts address what happens when things go wrong between you and the other party
- Contracts address who bears financial risk if a third-party (or their property) is injured.
- Contracts can dictate what law will apply and where you'll have to go if there is a dispute.
- Contracts can dictate how disputes are resolved.
- Contracts can address the parties' respective responsibilities in a given relationship.

Important Terms to Review and Understand: The Basics!

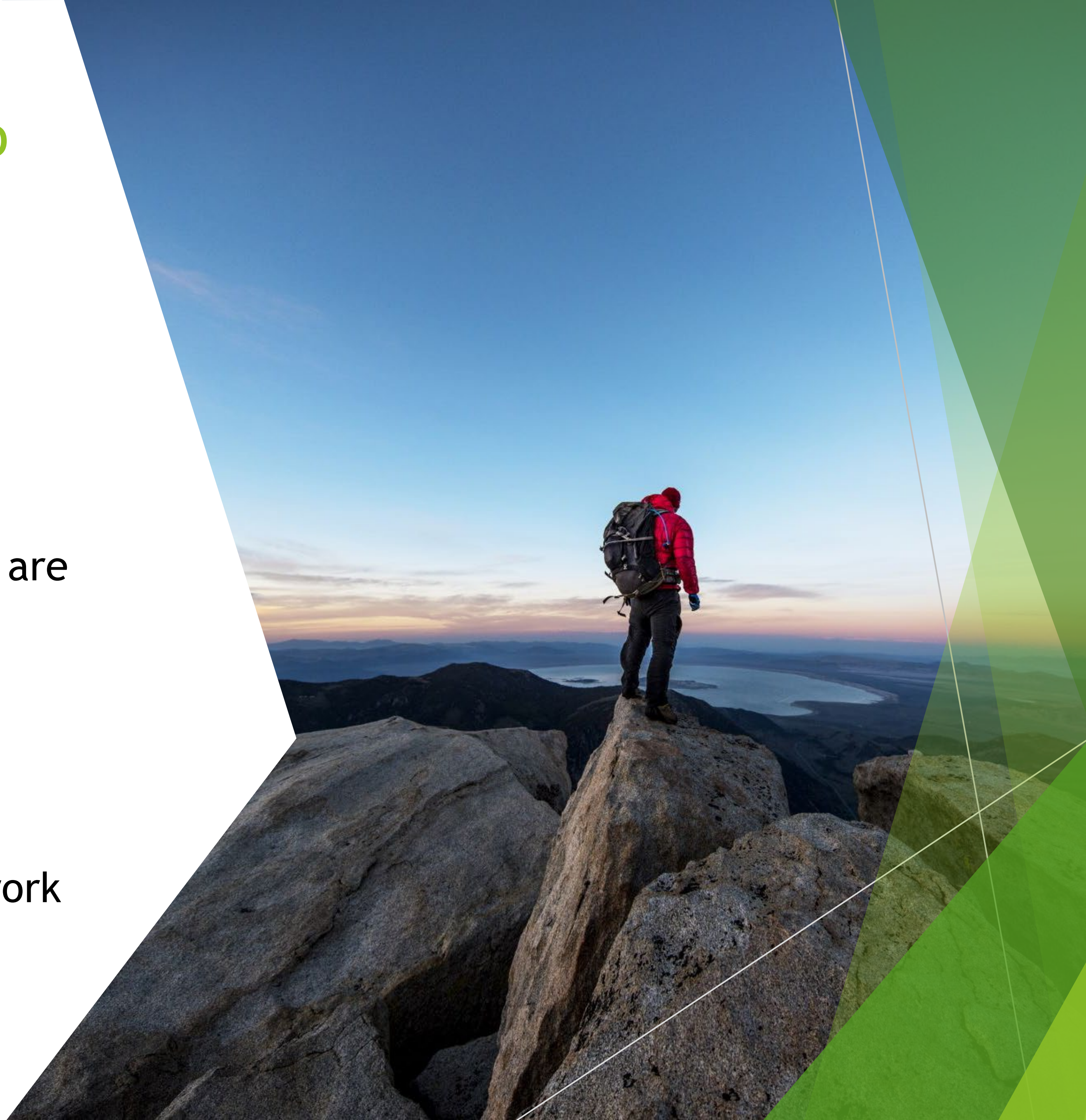
- Who is the contract with?
- The duration of the contract (aka “the Term”)
- Payment terms (not just the amount)
- The essential terms in the contract actually match what you thought you were agreeing to.
- State that contracting party is an independent contractor, responsible for paying employees/taxes.
- What standard for the quality of work or services provided?
- How can the contract be terminated? What happens from a payment perspective if it is terminated?
- What constitutes a breach and what happens if there is a breach?

Important Terms to Review and Understand: Risk Allocation!

- Acceptance of Liability/Responsibility/Safety
- Indemnity
- Insurance . . . Consider:
  - Gen. Liability
  - Commercial Auto Liability
  - Cyber Liability
  - Builder's Risk
  - How much should they have?
  - Workers Compensation
  - Certificate of Insurance
  - Additional Insured Status
- Limitation of damages for breach or termination

Important Terms: Who performs and when completed.

- Employees?
  - Workers Comp.
- Subcontractors
  - Who are they and what are their qualifications
  - Watch out for Liens
  - Insurance
  - Responsibility for subcontractor's work
  - What is their scope of work and responsibilities?



Important Terms: Boilerplate terms matter!

- Protecting your IP
- Protecting proprietary information
- Child Protection Expectations
- Dispute resolution
- Jurisdiction/Venue Clause
- Choice of law
- Integration Clause
- Severance Clause
- Force Majeure
- Authority to execute

Important Terms: Other Terms to Consider

- Modification requirements
- Time is of the Essence
- Media Clause
- DEI Expectations
- Environmental Considerations
- Site Clean-up

What is a Participant Agreement?

This is a key legal contract with your customers intended to:

(1) advise them of the risks of being on your program and participating in the activities you offer;

(2) obtain their acknowledgment and assumption of these risks;

(3) formalize their waiver of liability against your company and its owners and personnel, and agreement to indemnify you.

Among other things, with these Agreements, you should:

(1) Be mindful of who signs these Agreements and when they are signed;

(2) Be mindful of how you present the Agreement to your students/parents and behave consistent with the Agreement;

(3) List all risks the participants may conceivably encounter on your program;

(4) Advise your participants in an explicit fashion that they are releasing you even for claims resulting exclusively from your own negligence;

(5) Be available to answer any questions.

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Questions?

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